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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 STATE OF CALIFORNIA
12 DEPARTMENT OF TOXIC
13 SUBSTANCES CONTROL,

14 Plaintiff,

15 v.

16 AEROJET-GENERAL CORPORATION;
17 ALLIED-SIGNAL, INCORPORATED;
18 ALTERNATIVE MATERIALS
19 TECHNOLOGY, INCORPORATED (for
20 U.S. CELLULOSE); ASHLAND
21 CHEMICAL, INCORPORATED;
22 CHEMCENTRAL CORPORATION;
23 CHEVRON U.S.A., INCORPORATED;
24 COURTAULDS COATINGS,
25 INCORPORATED (for
26 INTERNATIONAL PAINT COMPANY);
27 DELTA AIR LINES, INCORPORATED;
28 DORSETT & JACKSON,
INCORPORATED; THE DOW
CHEMICAL COMPANY; E.I. DuPONT
de NEMOURS & CO., INCORPORATED;
EUREKA CHEMICAL COMPANY;
EUREKA FLUID WORKS; FORD
MOTOR COMPANY; GENERAL
MOTORS CORPORATION; GREAT

Case No.: C 00 4796 PJH

**DECLARATION OF JOSEPH J.
ARMAO IN SUPPORT OF MOTION
OF NON-FEDERAL DEFENDANTS
FOR JUDICIAL APPROVAL OF
SETTLEMENT AGREEMENT AND
CONSENT DECREE**

Date: July 11, 2001

Time: 9:00 a.m.

HONORABLE PHYLLIS J. HAMILTON

1 WESTERN CHEMICAL COMPANY;
2 HEWLETT-PACKARD COMPANY;
3 INTER-STATE OIL COMPANY;
4 INGERSOLL-RAND COMPANY (for
5 SCHLAGE LOCK COMPANY); INTEL
6 CORPORATION; INTERNATIONAL
7 PAPER COMPANY (for STECHER-
8 TRAUNG-SCHMIDT); KAISER
9 ALUMINUM & CHEMICAL
10 CORPORATION; LITTON ELECTRON
11 DEVICES (a division of LITTON
12 SYSTEMS, INCORPORATED);
13 LOCKHEED MARTIN CORPORATION
14 (successor to LOCKHEED MISSILES &
15 SPACE COMPANY, INCORPORATED);
16 MAXUS ENERGY CORPORATION (for
17 OCCIDENTAL CHEMICAL
18 CORPORATION, successor to DIAMOND
19 SHAMROCK CHEMICALS COMPANY,
20 f.k.a. DIAMOND SHAMROCK
21 CORPORATION); McKESSON HBOC,
22 INCORPORATED; MONSANTO
23 COMPANY; NI INDUSTRIES,
24 INCORPORATED; NL INDUSTRIES,
25 INCORPORATED; THE O'BRIEN
26 CORPORATION (for FULLER-O'BRIEN
27 PAINTS); OLYMPIAN OIL COMPANY;
28 OWENS-ILLINOIS, INCORPORATED;
PACIFIC GAS & ELECTRIC
COMPANY; PENNZOIL-QUAKER
STATE COMPANY; PUREGRO
COMPANY; RAYCHEM
CORPORATION; REDDING
PETROLEUM, INCORPORATED;
REDWOOD OIL COMPANY;
REICHHOLD CHEMICALS,
INCORPORATED; REYNOLDS
METALS COMPANY; R.J.
McGLENNON COMPANY,
INCORPORATED; ROCHESTER
MIDLAND CORPORATION (for
BYTECH CHEMICAL CORPORATION);
ROHM & HAAS COMPANY; ROMIC
ENVIRONMENTAL TECHNOLOGIES

DECLARATION OF JOSEPH J. ARMAO

CASE NO. : C 00 4796 PJH

1 CORPORATION (successor to ROMIC
2 CHEMICAL CORPORATION); SANDOZ
3 AGRO, INCORPORATED (for ZOECON
4 CORPORATION); SAN FRANCISCO
5 BAY AREA RAPID TRANSIT
6 DISTRICT; SEQUA CORPORATION (for
7 GENERAL PRINTING INK, a division of
8 SUN CHEMICAL); SHELL OIL
9 COMPANY; SIMPSON COATINGS
10 GROUP, INCORPORATED; STANFORD
11 UNIVERSITY; THE STERO COMPANY;
12 SYNERGY PRODUCTION GROUP,
13 INCORPORATED (d.b.a. HALEY
14 JANITORIAL SUPPLY CO.,
15 INCORPORATED and WESTERN
16 CHEMICAL COMPANY); SYNTEX
17 (U.S.A.), INCORPORATED; TAP
18 PLASTICS, INCORPORATED;
19 TELEDYNE RYAN AERONAUTICAL,
20 McCORMICK SELPH ORDNANCE
21 UNIT (for TELEDYNE McCORMICK
22 SELPH); TEXTRON, INCORPORATED;
23 UNION OIL COMPANY OF
24 CALIFORNIA; UNITED AIR LINES,
25 INCORPORATED; UNITED STATES
26 DEFENSE REUTILIZATION
27 MARKETING SERVICE; UNITED
28 TECHNOLOGIES CORPORATION;
UNIVERSITY OF CALIFORNIA; VAN
WATERS & ROGERS INCORPORATED;
VOPAK DISTRIBUTION AMERICAS
CORPORATION (f.k.a. UNIVAR
CORPORATION); W.R. GRACE &
COMPANY; and W.R. MEADOWS,
INCORPORATED,

Defendants.

1 I, Joseph J. Armao, declare as follows:

2 1. I am an attorney licensed to practice before all Courts in the State of California
3 and am a shareholder in the law offices of Heller Ehrman White & McAuliffe, LLP, counsel
4 for non-federal defendants in the above-captioned matter. I have personal knowledge of the
5 facts set forth herein and, if called upon to testify, could and would competently testify
6 thereto.

7 2. The Bay Area Drum *Ad Hoc* Potentially Responsible Parties ("PRP") Group
8 (the "Group") consists of 64 companies and 1 public entity that the California Department of
9 Toxic Substances Control ("DTSC") has identified as PRPs at the Bay Area Drum State
10 Superfund Site located at 1212 Thomas Avenue, San Francisco, California ("the Site").

11 3. On March 14, 1996, after having already performed significant investigative
12 work at the Site, the Group entered into a Consent Order, Docket No. HSA 95/96-060, with
13 DTSC (the "Consent Order") in which it expressly denied any liability and reserved all
14 defenses and rights but nonetheless agreed to perform certain additional Site investigation
15 tasks that were to culminate in the preparation of a draft remedial action plan. The Group's
16 cooperation with DTSC on remedial investigation work at the Site prior to entering into the
17 Consent Order included the following: (1) transportation and offsite treatment of
18 investigation-derived wastes generated and stored at the Site by DTSC; (2) groundwater
19 sampling, laboratory analysis and reporting; (3) flux chamber soil-vapor air sampling,
20 laboratory analysis and reporting; (4) preparation and submission of a Risk Assessment
21 Workplan (June 1994), approved by DTSC January 1995; and (5) preliminary work on the
22 Baseline Risk Assessment.

23 4. On April 4, 1996, DTSC issued an Imminent & Substantial Endangerment
24 Determination and Order, Docket No. I&SE 95/96-004, to those PRPs that did not sign the
25 Consent Order and that had not been cooperating with DTSC or performing work at the Site.

26 5. Since entering into the Consent Order, the Site investigation work performed by
27 the Group includes the following additional items (all of which were performed in accordance
28 with the Consent Order's timetable requirements, or were performed pursuant to separate

1 requests by DTSC not included in the Consent Order): (1) prepared and submitted a Baseline
2 Risk Assessment (May 1996), approved by DTSC May 1997; (2) prepared and submitted a
3 Groundwater Monitoring Workplan (May 1996), approved by DTSC August 1996; (3)
4 prepared and submitted a Public Participation Plan (May 1996), approved by DTSC March
5 1997; (4) performed regular rounds of groundwater sampling, laboratory analysis and
6 reporting; (5) surveyed and repaired DTSC's monitoring wells and peizometers in the vicinity
7 of the Site; (6) prepared and submitted an RI/FS Workplan (July 1997); and (7) prepared and
8 submitted a Feasibility Study and Remedial Action Plan (see below).

9 6. Performance of the above investigative work has entailed regular oversight
10 meetings with DTSC and the Regional Water Quality Control Board for the San Francisco
11 Bay Region, as well as the negotiation of access agreements with the current owners of the
12 Site and others. The Group also has worked within the community to inform area residents
13 about the investigative work being performed at the Site by distributing fact sheets,
14 maintaining and updating the local information repository, and attending numerous public
15 meetings.

16 7. On May 22, 1998, DTSC requested that the Group submit a draft Removal
17 Action Work Plan ("RAW") for soil in eight residential backyards adjacent to the 1212
18 Thomas Avenue property. DTSC requested the Group to consider this activity based on
19 concerns expressed by the residents whose properties abut the building and capped yard on
20 the north side of the property. This undertaking was largely voluntary, since DTSC
21 acknowledged that conditions in these yards did not rise to the level of an endangerment
22 supporting issuance of an Imminent and Substantial Endangerment order. The Group agreed
23 to do so and performed extensive investigative work in the eight adjoining backyards,
24 including multiple rounds of soil and groundwater sampling and laboratory analysis. On
25 December 22, 1998, after a public hearing at the Bay View Opera House and the submission
26 of comments by area from residents and several environmental public interest organizations,
27 the RAW prepared by the Group was approved by DTSC. The final RAW requires limited
28

1 soil removal in the eight backyards adjacent to the Site, confirmation sampling to ensure
2 achievement of residential cleanup levels, and public participation.

3 8. After approval of the RAW, the Group performed regular work at the eight
4 adjoining properties. This work has included regular groundwater monitoring at the Site and
5 neighboring backyards as well as additional investigative work. The Group also has agreed
6 to pay the residents for the temporary inconvenience associated with the performance of the
7 cleanup.

8 9. In accordance with the Consent Order, the Group prepared and submitted the
9 Feasibility Study and Remedial Action Plan ("FS/RAP"). Following an extensive public
10 participation process that included a public hearing at the Bay View Opera House and the
11 submission of numerous oral and written comments by area residents, public interest
12 environmental organizations and others, DTSC approved the FS/RAP for the Site on August
13 14, 2000. No writs or other challenges were filed, and the FS/RAP has become final. The
14 final FS/RAP requires the preparation and approval by DTSC of a detailed Remedial Design
15 for the implementation of the approved remedy. In sum, the remedy requires extensive soil
16 removal, groundwater remedial activities consisting of enhanced monitored biodegradation
17 techniques employing the injection of oxygen reducing compounds, confirmation soil and
18 groundwater sampling to ensure the achievement of residential cleanup standards, and follow-
19 up remedial activities in accordance with an approved Operation, Maintenance and
20 Monitoring Agreement. See Exhibits D & E to the Consent Decree and Settlement
21 Agreement.

22 10. Since approval of the FS/RAP, the Group has continued to perform extensive
23 work at the Site in order to ensure that the cleanup can be performed this year. The Group
24 has engaged an environmental consultant, Geomatrix Consultants, to implement the cleanup,
25 including both the RAW and the RAP, in accordance with the Consent Decree. Based on
26 information provided by both its consultants and the technical staff of its members, the Group
27 has estimated that the total cost of implementing the cleanup will exceed \$3.3 million.
28

1 11. In late 1999, the Group and DTSC began the settlement negotiations that led to
2 the Settlement Agreement and Consent Decree (the "Consent Decree"). The Consent Decree
3 was the result of lengthy negotiations between DTSC and the defendants. The issues
4 negotiated included the scope of the cleanup and the amount to be paid to settle DTSC's
5 claim for its past response costs. After approximately one year of vigorous and occasionally
6 contentious negotiations, the Group and DTSC reached a settlement in principle in the fall of
7 2000, shortly after the FS/RAP was approved. Final agreement on the terms and language of
8 the Consent Decree was reached in February 2001. Additional time was needed to negotiate
9 the participation of the federal defendant (United States Defense Reutilization and Marketing
10 Service), and to obtain the signatures of the sixty-five parties participating in the Consent
11 Decree.

12 12. In the Consent Decree, the defendants have agreed to implement the cleanup.
13 As noted above, the Group has estimated that the cost of implementing both the FS/RAP and
14 the RAW will exceed \$3.3 million. The Group has incurred costs in excess of \$4.5 million
15 performing work at the Site since 1993.

16 13. DTSC has represented that it has incurred costs in excess of \$5.1 million
17 conducting and supervising activities in response to the release and threatened release of
18 hazardous substances at the site, and has secured reimbursement of more than \$1 million of
19 this sum through *de minimis* settlement agreements, distributions from the estates in
20 bankruptcy of several Site potential responsible parties ("PRPs"), and from payments made
21 by the Group. In addition to performing extensive remedial investigative and other work at
22 the Site during the last eight years, the Group paid DTSC \$310,000 pursuant to the Consent
23 Order. The Group also was instrumental in brokering DTSC's settlement with former
24 owner/operator Waymire Drum, which allowed DTSC to recover \$400,000.

25 14. Other PRPs exist from which DTSC can seek recovery of its past costs. These
26 include the former owners and operators, which defendants believe share the primary liability
27 for the contamination. DTSC itself has identified these former owners and operators as
28 potentially responsible parties. In the Preliminary Non-Binding Allocation of Responsibility

1 ("NBAR") involving the Site, DTSC identified the following parties as PRPs: Freud F.
2 Farley; Karl Kluck; Jack Hamilton; David Cannon; Bay Area Drum Company, Incorporated;
3 Ernest & Florence Bedini; Joseph C. Bedini; Olando T. and Bella Bedini; Bedini Steel Drum
4 Company; Bedini Barrells Incorporated; Bedini Brothers Company; Bedini Brothers Steel
5 Drum Company; and A.W. Sorich Barrel & Drum Company. Further, a number of PRPs
6 have been identified who generated and sent waste to the Site, and are not members of the
7 Group or otherwise cooperate in investigative activities at the Site. Those parties are Charles
8 H. Dana Company; The Glidden Company; Peninsula Oil Company; and Kelly-Moore Paint
9 Company, Incorporated.

10 15. The Group believes that it has a number of valid defenses to DTSC's claim for
11 approximately \$4.5 million in past costs, including, but not limited to, those based on statutes
12 of limitations and the failure by DTSC to comply with the National Contingency Plan.

13 16. Nonetheless, the Group concluded that the terms of the Consent Decree
14 constituted a fair and reasonable compromise; indeed, one which is generous to DTSC and
15 which will serve the public interest by ensuring the cleanup of the Site to residential
16 standards, thereby protecting public health and the environment.

17 17. The Group is continuing to perform work at the Site so as to be ready to
18 implement the remedy during the 2001 construction season. In order to complete the work
19 before the on-set of the rainy season, the Group has determined that work must begin at the
20 Site by July 2001.

21 18. Upon the confirmation of a briefing and hearing schedule by the Court,
22 defendants will mail a copy of the Consent Decree, the Motion and Memorandum of Points
23 and Authorities, this Declaration, the Proposed Order granting this motion, and any Court
24 order establishing a briefing and hearing schedule to: 1) the other PRPs identified by DTSC
25 with respect to the Site; 2) approximately 350 persons or entities who or which reside or
26 conduct business operations on, or own, real property adjacent to or in the vicinity of the
27 Property, and addresses adjacent to or in the vicinity of the Property; and 3) the roughly 50
28 other persons and entities on DTSC's mailing list (other than elected officials and news

1 media) who or which have requested notice from DTSC regarding activities at the Site, or
2 who or which automatically receive such notice.

3 19. Defendant Pacific Gas & Electric Company ("PG&E") has authorized the filing
4 of the Motion to Approve the Consent Decree on its behalf, along with the other defendants.
5 In 1995, PG&E entered into a *de minimis* buy-out and indemnity agreement with eleven
6 members of the Group acting as indemnitors. Pursuant to that agreement, those eleven
7 indemnitor Group members will perform all of PG&E's obligations under the Consent Decree
8 in consideration for PG&E's prior cash payment. That payment was deposited into a grantor
9 trust managed by Bankers Trust in New York City. The funds in that trust were dedicated to
10 the Group's performance of remedial investigation activities at the Site. The funds in that
11 trust were exhausted and the trust closed in or around 1998.

12 20. Defendant W.R. Grace & Company ("W.R. Grace") has authorized the filing of
13 the Motion to Approve the Consent Decree on its behalf, along with the other defendants.
14 W.R. Grace has entered into a separate cash-out and indemnity agreement with eleven
15 members of the Group acting as indemnitors. Pursuant to that agreement, those members will
16 perform all of W.R. Grace's obligations under the Consent Decree in consideration for W.R.
17 Grace's payment to the Group of \$39,225 once it obtains bankruptcy court approval of this
18 amount. W.R. Grace has represented to the Group that it fully expects the bankruptcy court
19 to grant approval of this amount, as it likely will be below the threshold amount for "*de*
20 *minimis*" claims in the bankruptcy proceedings. The payment from W.R. Grace will be
21 dedicated to the performance of remedial activities at the Site.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct and that this declaration was executed on this 31st day of May,
24 2001 at San Francisco, California.

25
26 By

JOSEPH J. ARMAO